



BY THE HOUSE DELEGATES,

February 12th, 1846.

Read and ordered to be printed.

REPORT

OF THE

COMMITTEE ON FEDERAL RELATIONS,

TO WHICH WAS REFERRED THAT PORTION OF THE

GOVERNOR'S MESSAGE

Which relates to the controversy now existing between the United States and Great Britain, in reference to the

OREGON TERRITORY,

As well as certain Resolutions presented to the House of Delegates upon the same subject.

The Committee on Federal Relations, to which was referred that portion of the Governor's Message which relates to the controversy now existing between the United States and Great Britain in reference to the Oregon Territory, as well as certain Resolutions presented to the House of Delegates upon the same subject, beg leave to offer the following Report.

Your committee do not deem it necessary or appropriate, under all the circumstances, to detail with any minuteness the different grounds on which the United States and Great Britain have, at various times, placed their respective claims of title, to the territory in dispute.

The recent correspondence, between the British Minister and the American Secretary of State, has thrown so much light upon the subject, and placed so prominently before the country the views and opinions of both Governments in relation to their respective titles, that it would be a work of supererogation to recapitulate either the facts or the arguments deduced from them, on which reliance has been placed to sustain either the one or the other of these titles. It is assumed that the members of this House have not failed to avail themselves of the information thus given to the public, upon a question of such vital interest to the country, and that from a careful review of all the facts and circumstances, of which they have thus become informed, they will doubtless be enabled to arrive at opinions and conclusions, in reference to the question of title, quite as satisfactory to themselves, as any which it is in the power of the committee to suggest or recommend.

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Your committee have purposely abstained from the consideration of the various questions which have arisen between the two countries, in relation to the title set up by either of them because, in the views which have presented themselves to the committee, in connection, more immediately, with the course to be pursued by the Government, in the present juncture of affairs, it has occurred to them that, whether the American or the British title be the better one, the time has now arrived when the Government of the United States should discharge the obligation which has been imposed on it, of doing something towards the final adjustment and settlement of a controversy which has so long agitated the public mind, and which, if permitted to remain in its present condition, will, more than likely continue to produce the most disastrous results upon the general business of the country.

How far the American title to the Territory in dispute may be better maintained, than that of Great Britain, upon principles of reason and argument as drawn from international Law, is a question, which may well enough be discussed, by American and British statesmen. But if we are allowed to judge of the future from the past, there will be but little ground to hope that, from mere argument alone, Great Britain will ever be persuaded to abandon her whole claim to the Oregon Territory. On the contrary, we may reasonably expect, from well known principles, which ordinarily govern both men and nations in their intercourse with each other, that the longer discussion is continued upon questions vitally affecting their private interests, the more likely are first impressions to ripen into conviction, and speculative theories to become well considered rules of deliberate action. It may well be doubted then, whether either nation can expect to derive advantage or benefit from a longer discussion of their conflicting claims. The necessary tendency of such protracted discussion will be in the nature of things, not only to excite bitter and envenomed feelings between the people of the two countries, and to injure seriously their trade and commercial pursuits, but it will likewise disturb, more or less, the amicable relations which now subsist between both countries and other nations of the civilized world. Your committee, therefore, believe that the United States would be pursuing the path, both of wisdom and duty, to take some early and decisive step towards bringing to a close this protracted and exciting controversy.

By the provisions of the Constitution of the United States, the President, by and with the advice and consent of the Senate, is authorised to make treaties, between us and foreign nations. This power has been held to relate, not only to questions of commercial and military import, but to all questions that may arise between us and foreign nations, affecting the peace and honor of the country, and which are not expressly confided to other departments of the Government. That he has the right to originate and conclude treaties affecting questions of boundary, has been so conclusively settled, as to admit, now, of no doubt. To say nothing

of the Treaty of 1783, by which the United States acquired, not only their independence from British thralldom, but an absolute right to the soil within the limits of their claim, we can safely point to the treaties by which we acquired Louisiana and Florida, as well as that by which the North-eastern boundary between the United States and the British Provinces was established, as precedents, clearly indicating the recognized powers of the Executive, upon all questions, which relate to boundaries between us and foreign governments. Your committee have not, therefore, hesitated in coming to the conclusion that, if practicable, this question should be left to the unembarrassed action of the Executive, to the full extent of the power vested in him by the Constitution of the United States.

But while your committee look in the first instance to the Executive Department of Government to settle and adjust questions of this description they have not been unmindful of the difficulties which recent events have thrown in the way, of an efficient and satisfactory termination of the question now under consideration by Executive negotiations. From an attentive consideration of all the documents to which they have had access, it seems that the Executives of the two countries cannot agree upon a boundary or dividing line. The United States, with a claim of title "to the whole of Oregon," a claim, which your committee must say, if not "clear and unquestionable" is yet, by far the most reasonable and just, have nevertheless proposed to Great Britain to divide the territory in dispute, by the forty-ninth parallel of north latitude. This has been done by our Government upon no less than four occasions. In 1818, and 1824 by Mr. Monroe, then President, with Mr. Adams as his Secretary of State. In 1826 by Mr. Adams, who was then President, and in 1845 by the present incumbent.

Upon two of these occasions the United States proposed to concede also the free navigation of the Columbia river. By the line of the forty-ninth parallel of north latitude, the Southern portion of the Columbia river from its mouth, where it empties into the Pacific ocean up to its intersection with Flat bow river, extending a distance of nearly five hundred miles, will belong to the United States, while the entire river north of that line, extending a distance of nearly two hundred miles to its source in the Rocky mountains, will belong to Great Britain. By the same line of parallel the Southern portion of Vancouver's island, and the harbour in the straits of Juan-de-Fuca, which is deemed to be one of the best, if not the best on the Pacific coast, will belong also to the United States—but by the propositions recently made by this Government, this and all other ports on Vancouver's Island south of this parallel are offered to be made free to Great Britain. It is true that the last proposition by our Government did not include the offer of the free navigation of the Columbia river, but it conceded what had never been offered before, the use of the free ports on the southern portion of Vancouver's Island. With

regard to the free navigation of the Columbia river, your committee would desire to be understood as expressing no decided opinion; but from all they can discover, it does not appear to them, that any serious injury would ensue to the United States, in stipulating for the free navigation of that river. Having the entire control of the mouth of the river as they would have by means of forts and fortifications, and being the owner of the territory on both sides from its mouth up for the distance of five hundred miles, it is difficult to conceive in what manner the navigation of the river if conceded to Great Britain in common with ourselves, could impair any of the great interests of the country, or seriously embarrass any of the operations either of the people of the territory, or of the Government of the United States. Besides, Great Britain having by the terms of the proposed compromise, the exclusive right to the Territory bordering on each side of the river for the distance of nearly two hundred miles north of the forty-ninth parallel of north latitude, it would seem to be unjust to exclude her from all access to that portion of her territory watered by the river. Without the liberty of free ingress at the mouth, and a continuing right of navigation to the point where her territory commences, that portion of it at least bordering on the river, as it would seem to your committee, will be of but little value to her, and scarcely worth the acquisition. It is more than likely that this proposition was not repeated to the British Government by the present Executive, because it was known, that on two former occasions, it had been deliberately rejected by her accredited representatives, and perhaps from a sincere desire to avoid all appearances of compromising in the slightest degree, the dignity of the nation, by again submitting propositions, which the United States had on former occasions been told would not be received. All these propositions, liberal as they appear to be, have however, on various occasions been rejected by Great Britain. The expectation, that at some future time she might receive more favorable concessions, may perhaps have prompted her to this course, but your committee believe that in all probability no terms more favorable to Great Britain will be offered by the United States. Under these circumstances it is apparent that the chances of settling the controversy by negotiations are becoming more and more uncertain. Indeed unless Great Britain expresses some willingness either to recede from her position, or to accept of some one of the propositions hitherto made to her by this Government, it is quite certain that all hopes may be abandoned of having the matter adjusted *under present circumstances*, by Executive negotiations.

Your committee have reflected much upon the position in which the United States are placed by the operation of the Convention of 1827, between them and Great Britain, usually termed the Treaty of Joint Occupancy of the Oregon Territory. And in the view which your committee have taken of that Convention, and the rights of the respective parties to it, great doubts are entertained, whether a longer continuance of it, would not be injurious

to the interests of the United States. By the provisions of that Convention the whole of the country west of the Stony Mountains, bordering on the North-west coast, which was then claimed both by Great Britain and the United States, is to remain free and open to the citizens and subjects of both countries. There is no limitation as to the time of its duration, but either party can put an end to it by giving the other twelve months notice of the intention so to do.

It has been said by a very distinguished gentleman, whose opinions are at all times entitled to great weight, that this Convention has been improperly called a Treaty of Joint Occupation. It is, as he maintains, rather a treaty of *non-occupation*, than one of joint occupancy. But, in this opinion your committee cannot concur. The language of the Third Article of the Convention of the 20th October, 1818, which was to be in force for only ten years, but which is adopted by the Convention of 6th August, 1827, and is to continue and remain in force for an indefinite period, will not admit of such construction. The language is, "That *any country* that may be claimed by either party, on the North-west Coast of America, westward to the Stony mountains shall, *together with its* harbours, bays, creeks, and the navigation of all rivers within the same, *be free and open*, for the term of ten years, &c., to the vessels, *citizens and subjects of the two Powers.*" Not only are the harbors, bays, creeks, and the navigation of all rivers to be free and open to the vessels of both nations, but *any country* that may be claimed by either party, is also to be free and open to the citizens and subjects of *the two Powers*. If the rivers, harbors, &c., are to be free and open to the vessels of either party, so also, is the country or territory itself, to be free and open, to occupancy by the citizens and subjects of either party. It is not, as is supposed, an agreement, to leave the country, claimed by both, free and open to all the world; but, on the contrary, it is to be free and open, only to the citizens and subjects of *the two contracting Powers.* The country being free and open to both, gives to each the right to occupy, and it is precisely this right of free occupancy, secured to *both*, which makes it, properly speaking, a Treaty of Joint Occupancy.

At the time when this Convention was made, the title of the United States to the Oregon Territory was not so clearly developed as it has been since, nor was it to the same extent believed to be better than Great Britain's, as it is at the present time. Your committee are not disposed to cast any censure on the individuals who negotiated that Convention, but your committee entertain no doubt, that if it were now a new question, and for the first time proposed to the Government and People of the United States, there would be but few in the country who would be found to be its advocates. The agreement to occupy jointly, is in itself, the admission of a doubtful title; and it is difficult to suppose that any nation, with a full knowledge of its title, and with a firm belief in the soundness of it, would so materially impair its strength, by

admitting to an equal participation of it a party of more doubtful claims. This Convention has now been in operation for nearly nineteen years, during which time by far the greater portion of the emigration from the United States to the Oregon Territory has taken place. And yet, by the terms of its provisions, and the conceded constructions which have been given to them, the United States can urge no claims to the country, by reason of these intermediate settlements by her people. In this position the United States will continue to exist, so long as the Treaty of Joint Occupancy is permitted to remain in force. It is well understood to be the settled Law of Nations, and, indeed, admitted, even by the American Secretary of State, (Mr. Buchanan,) in his correspondence with the British Minister, that mere Discovery and Exploration alone, of a wild and uncultivated country, will not, of itself, give an absolute right. It must be followed by a settlement and occupancy by at least a portion of the people of the country which discovered it. What acts amount to settlement and occupancy, are questions upon which statesmen may differ. That such settlements have been made, both by Spain, from whom the United States derived their title in part, and also by the United States themselves, would seem to be quite clear. But if this were not so, your committee cannot doubt that the tide of emigration which has flowed to that country from the United States, within the last nineteen or twenty years, in connection with antecedent settlements and explorations, would at this day, have placed the United States upon grounds of precedence over Great Britain, from which she would have found it difficult to be relieved. But by the operation of this Convention, no such advantages can be claimed by the United States; because, by its terms, they are to enure to the common benefit of both countries. With a tide of emigration so constantly and steadily flowing from the United States to the Oregon Territory, we might reasonably have expected to have obtained a foot hold there, which no nation on earth could have impaired. It would have become a source of power, from which the American title would have grown more and more impregnable, as time rolled on. As matters now stand, the United States may send colony after colony to that country, and yet derive no additional strength to their title. Such colonization may, it is true, give them additional power, but it will be power, of which, *by right*, they can take no advantage; because, by solemn Treaty, they have stipulated that such colonization shall be considered as the joint occupancy of the two countries. By Great Britain, whose title was weak and doubtful, and who, it may be supposed, was not then prepared to colonize the country, such stipulations may have been regarded with more than ordinary favor; but your committee have not discovered in what manner they could have been expected to become beneficial to the United States.

Your committee do not think that the termination of the convention by the United States will furnish any just ground of complaint to Great Britain. The usual provisions to be found in most

Treaties, by which a day is fixed, when it shall expire by its own limitations, is wholly omitted in this, and no other mode is provided by which it can be abrogated, than the reciprocal right of each, to terminate it, by giving notice to the other. This right is secured to each Nation by the express terms of the Treaty itself, and the exercise of it by either nation, can consequently, be no ground of offence to the other. Should Great Britain, contrary to the express stipulations of the convention, under any pretext whatever, construe the giving of notice by the United States of their intention to terminate the Convention, into an act of hostility on the part of the United States, she would undoubtedly stand convicted of a faithless disregard of her most solemn treaty stipulations, and would justly expose herself to the censure and indignation of the civilized world. Such a result, cannot as it seems to your committee, be anticipated for a moment, and should it take place contrary to all reasonable expectations, the United States would be consoled by the reflection that whatever disastrous consequences might follow, Great Britain alone would be answerable for them.

Your committee have already said that in their judgment, to the Executive Departments of the two governments should be confided the settlement of this perplexing controversy, but in view of the difficulties which have been thrown in the way of such adjustment, they have said, that but little hope can be expected under existing circumstances, of a satisfactory arrangement, through Executive negotiations; among the difficulties in the way of a settlement by Executive negotiations, to which allusion has already been made, this very convention of 1827 seems to your committee to present others of equal, if not more decided influence. As long as this Convention exists, no danger of any actual collision between the two countries can be expected to take place. Great Britain sees in its provisions an entrenchment, behind which she can safely and securely plant herself, without the apprehension of evil, or the chances of conflict. Is it probable then, that during the continuance of such exemption from danger, she will seriously contemplate the extent of the evils to which she may be exposed, or set to work, in good earnest, to avert them. Confiding in the security of her present relations, can she have any controlling motive to prompt a desire on her part to bring about a change in these relations? As long as the United States will consent to remain in her present position of peace and inactivity, under the stipulations of this Convention, Great Britain may naturally enough be supposed to look on all attempts at negotiation with distrust and indifference. Hence it may reasonably be expected, that no real effort to bring this question to final adjustment, will be made, until an absolute necessity is created either to close it by negotiation, or to appeal to the last resort of nations. That necessity does not now exist, and never will exist, until the United States shall abrogate the convention of 1827. A crisis will then have arisen between the two nations, when they will be obliged either to compromise on terms alike honorable to both, or appeals to arms. When such a

crisis shall come, no man can doubt the ultimate result, who has narrowly observed the course of either government, in relation to the subject matter of controversy between them. The same rules and principles that govern men, apply also to nations. In fact, nations are but men acting in congregate capacities, and one of the most eminent philosophers who ever lived, has very justly remarked, "that in proportion as danger increases, in the same proportion will be the efforts made either to avert or overcome it."

In view of these great and fundamental principles of human action, and with a sincere desire to secure the most safe and reliable agency in effecting the compromises and adjustments of this question, which can be resorted to, to wit: that of Executive negotiations, your committee do not hesitate to recommend a termination of the convention made in 1827, between the United States and Great Britain, in relation to the joint occupancy of the Oregon Territory. Believing as they do, that until that convention is abrogated, no practical or efficient steps will be taken by either nation to bring to a close the matter in dispute between them.

Your committee desire not to be understood as recommending any measures which may lead to hasty or precipitate action on the part of the Congress of the United States.

The mode in which, and the time when, the notice to terminate should be given, they willingly submit to the more enlightened action of the representatives of the people in the councils of the nation; but they cannot otherwise, than express their conviction that the notice to terminate the convention, should be accompanied with the most emphatic declarations on the part of the United States of their sincere desire to preserve peace, and to avoid all just cause of quarrel between the two nations. In this event the question of peace or war will depend, not so much on the abrogation of the convention, as on the measures which may be subsequently adopted by the United States or Great Britain with a view to take and maintain possession of the whole territory, to the entire exclusion of the other. Your committee cannot suppose that such rash and inconsiderate action can, with any degree of reason, be anticipated from either party; and they have not therefore, thought it necessary to bestow much reflection upon the happening of an event, which they consider as altogether unlikely to occur.

With reference to the suggestions contained in the message of the Governor, and the propositions more recently made by the British government of submitting the whole matter to the arbitration of some friendly Power, your committee are of opinion, that however advisable and proper such a settlement of the question, might be deemed under other circumstances, the time has not yet arrived, when the United States would be justifiable in surrendering into the hands of other Powers, the control and management of a question of so much importance to them, and so deeply affecting their political destinations. In the judgment of your committee the whole power of negotiation should be exhausted, be-

fore a resort to arbitration should be had. And your committee have not been able to discover in the recent communications between the two governments, any difficulties of so insuperable a character as to preclude the reasonable hope that further efforts by means of negotiations will result in a peaceful and honorable adjustment of the question.

In conclusion, your committee beg leave to say, that they regard the questions involved in this controversy to be infinitely above the aims and objects of party spirit. When the rights and honor of the country are concerned, no man ought to enquire what will be the consequence of this or that measure to the party to which he may belong, but with a heart throbbing with the highest pulsations of patriotism, his whole energies should be directed solely to the preservation of his country's glory, and the maintenance of his country's rights. Impressed with these convictions the committee do not doubt, that whatever may be the final issue of this controversy, the people of Maryland will be found ever ready to co-operate with the Legislative and Executive departments of the Federal government, in all measures that may be deemed necessary to protect the honor of the country, or to vindicate her rights. And should a war ensue, Maryland will claim to be among the foremost in evincing her loyalty to the Constitution, and her willingness to share in all the toils and perils which it may be necessary to encounter, to preserve inviolate the freedom of the people, and the integrity of the Union.

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